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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1337

ACACIA MUTUAL LIFE INSURANCE COMPANY AND KARL W. CORBY, *Petitioners*,

v.

ALBERT F. JORDAN, SUPERINTENDENT OF INSURANCE FOR THE DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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QUESTION PRESENTED

Was there not a rational basis for the long-continued administrative interpretation of a local statute whereby a person who has borrowed money from a District of Columbia insurance company may not, while the loan remains unpaid, become a member of the board of directors of such company?

COUNTER-STATEMENT OF THE CASE

In 1953, the Acacia Mutual Life Insurance Company, the corporate petitioner herein, sought from the District of Columbia Superintendent of Insurance an opinion as

to whether, under D. C. Code, § 35-530,[1] a person indebted to a local insurance company could be an officer of that company where the indebtedness was incurred prior to his appointment as an officer. The Superintendent advised Acacia that, under his interpretation of the statute, a person could not be an officer of an insurance company to which he was indebted regardless of when the debt was incurred (Petitioners' app. 7a).

Thereafter, in April 1962, Acacia made a 21-year mortgage loan of $288,000 to petitioner Corby, and others. On March 21, 1967, Corby was elected a member of Acacia's Board of Directors and presently serves in that capacity (Petitioners' app. 1a, 7a). In June 1967, Acacia again inquired of the Superintendent whether, since Corby's debtor-creditor relationship with it commenced prior to his election as a director, § 35-530, D. C. Code, 1967, precluded his membership on the Board of Directors. Consistent with his previous opinion, the Superintendent ruled that it was statutorily impermissible for a person to serve as a director of a local insurance company at a time when he had a loan outstanding to that company, irrespective of when such indebtedness arose (Petitioners' app. 7a, 8a).

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[1] **§35-530. Officers and directors not to be pecuniarily interested in transactions—Appraisement—Loans on policies.** No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such company of any property, or any loan from such company, nor be pecuniarily interested either as principal, co-principal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity: *Provided*, That nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company: *Provided further*, That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director not in excess of the net value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, Ch. 672, Ch. III, § 30.)

In their action for injunctive and declaratory relief which followed petitioners asserted that the Superintendent's interpretation of the applicable statute was erroneous. The United States District Court for the District of Columbia so held (Petitioners' app. 1a-5a). The Superintendent appealed to the United States Court of Appeals for the District of Columbia Circuit, which reversed the judgment of the District Court and upheld the interpretation of the Superintendent (Petitioner's app. 6a, 13a). Petitioners thereafter petitioned this Court for a writ of certiorari.

ARGUMENT

Petitioners have failed to present any question of substance warranting the exercise of this Court's jurisdiction.

The record does not disclose any ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The case involves nothing more than the construction of a District of Columbia statute of purely local application designed to prevent conflicts of interest on the part of directors of insurance companies. In ruling in respondent's behalf the United States Court of Appeals for the District of Columbia Circuit construed § 35-530, D. C. Code, 1967, as precluding an individual who is "pecuniarily interested" in a transaction of an insurance company from becoming a director of the company, irrespective of when his pecuniary interest commenced. The effect of this ruling was to adopt the administrative interpretation which the Superintendent of Insurance has placed upon the applicable statute throughout the years. *Udall* v. *Tallman*, 380 U. S. 1, 16 (1965).

This Court has made it clear on many occasions that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of

egregious error, exercise its jurisdiction. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491 (1912); *Del Vecchio* v. *Bowers*, 296 U. S. 280 (1935); *District of Columbia* v. *Pace*, 320 U. S. 698 (1944); *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140 (1915); *Griffin* v. *United States*, 336 U. S. 704 (1949), rehearing denied, 337 U. S. 921 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946).

There has been no showing of egregious error here. Petitioners do not present a local question inseparably entwined with important constitutional issues. Cf. *District of Columbia* v. *Little*, 339 U. S. 1 (1950); *District of Columbia* v. *Thompson Co.*, 346 U. S. 100 (1953). Nor do they cite any case in which this Court or a circuit court of appeals, in dealing with a similar statute and factual situation, reached a result at variance with the decision below. In refusing to adopt the rule of strict construction proposed by petitioners, the United States Court of Appeals for the District of Columbia Circuit noted that the dominant theme of the statute involved was remedial and regulatory and that the addition of a misdemeanor sanction was but incidental to that theme. A failure to adopt a rule of strict construction under these circumstances is by no means at variance with the decisions of this Court. See *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 17-18 (1904); *Tcherepnin* v. *Knight*, 389 U. S. 332, 336 (1967); *United States* v. *An Article of Drug*, —— U. S. —— (U. S. No. 343, decided April 28, 1969). Even if it be assumed that the applicable statute is primarily criminal in nature, it cannot be said that the construction adopted by the United States Court of Appeals for the District of Columbia Circuit is so palpably wrong as to warrant review by this Court. In this respect, the Court's construction is consistent with both the title and plain terms of § 35-530. See *Federal Trade Commission* v. *Mandel Bros. Inc.*, 359 U. S. 385, 388-389

(1959). Cf. 48 Stat. 1151. It is also consistent with the Superintendent's long-standing administrative interpretatation. *Udall* v. *Tallman, supra.*

In no sense then can this case be viewed as presenting a question of a magnitude sufficient to warrant the exercise of this Court's jurisdiction to review on writ of certiorari. As this Court said in *Fisher* v. *United States, supra:*

> "Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere." (328 U. S. at 476.)

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for writ of certiorari should be denied.

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